

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF WYOMING

3 WILLIAM JEROME RUTH, individually,
4 and as Wrongful Death Representative
 of the ESTATE OF CYNTHIA SHOOK RUTH,

5 Plaintiff,

6 V.

7 BEARTOOTH ELECTRIC COOPERATIVE, INC.,
8 a Montana Corporation, and ASPLUNDH
 TREE EXPERT, LLC, a Limited Liability
9 Company formed in Pennsylvania,

10 Defendants.

11

12 DEPOSITION OF KEVIN OWENS
13 March 15, 2023
14 8:00 a.m.

15 PURSUANT TO THE UNITED STATES RULES OF FEDERAL
16 PROCEDURE, this Deposition was:

17 TAKEN BY: Robert Pahlke, Esq.
 Attorney for Plaintiff

18 REPORTED BY: Barbara Jean Morgenweck, RPR, CCR
19 NCRA, RPR
 New Mexico CCR #526

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27 On behalf of Defendant Asplundh Tree Expert, LLC:

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1 that you do in the utility industry.

2 Q. What is your current position?

3 A. I am general manager of Beartooth Electric
4 Co-op.

5 Q. Any plans to change in the future?

6 A. Yeah, am going to retire. That is a big
7 change.

8 Q. And when will that happen?

9 A. July 1st.

10 Q. As a professional engineer, I assume you're
11 familiar with Code of Ethics for Engineers?

12 A. Uh-huh. Yes, I am.

13 Q. I don't like to nag you. I'm going to let
14 Hank nag you.

15 A. I will get the first one out of the way and
16 I will follow.

17 Q. So as a professional engineer, you're -- I
18 am assuming you're familiar with the national Code
19 of Ethics for Engineers?

20 A. Yes.

21 Q. And I think you understand that engineers
22 are expected to exhibit the highest standards of
23 honesty and integrity?

24 A. Yes.

25 Q. Are you prepared to do that today?

1 broad jump from electricity to somebody not being
2 able to get out of a fire. Those are two separate
3 instances in my mind.

4 BY MR. PAHLKE:

5 Q. Let's talk about that more later, but right
6 now do you -- were you aware before November of 2021
7 that electricity could cause fires?

8 A. Yes.

9 Q. And were you aware that Montana and Wyoming
10 can have strong winds?

11 A. Yes.

12 Q. And were you aware that those fires combined
13 with wind can pose a risk of injury or death to the
14 public?

15 A. That is a possibility, yes.

16 Q. It is a risk, isn't it?

17 A. Yes.

18 Q. Is Beartooth's most important concern that
19 of safety?

20 MR. BAILEY: Object. Asked and answered.
21 Go ahead, answer again.

22 THE WITNESS: Absolutely, both for its
23 employees and the public.

24 BY MR. PAHLKE:

25 Q. It is important to be safe for both.

1 introduced him to me.

2 MR. BARKER: His name is John Paulsen,
3 P-A-U-L-S-E-N.

4 BY MR. PAHLKE:

5 Q. Do you know where he is located?

6 A. Some place in Montana, maybe as far as
7 Woodinville.

8 Q. When you signed the contract, are you saying
9 that on behalf of your members?

10 A. Absolutely.

11 Q. Are you expecting that Asplundh will trim
12 the trees so that the trees are going to avoid
13 contact with power lines that can cause fires?

14 A. According to the standards that are provided
15 for in that contract, yes.

16 Q. You expect them to follow that contract?

17 A. Absolutely. That is why it is a contract.

18 Q. This case, you know that they didn't do that
19 at the Hutton property in 2021?

20 A. That is correct.

21 Q. They breached their contract to you.

22 MR. BONA: Calls for speculation.

23 MR. BAILEY: Calls for a legal conclusion,
24 but go ahead.

25 THE WITNESS: I know that they were in error

1 not following that contract for the proper
2 clearances that are outlined in the contract.

3 BY MR. PAHLKE:

4 Q. You know that they were negligent in not
5 following the contract.

6 MR. BONA: Same objections.

7 BY MR. PAHLKE:

8 Q. True?

9 A. I know the tree was not trimmed to the
10 specifications in the contract.

11 Q. It violated the specification of the
12 contract.

13 A. Correct.

14 Q. Were those specifications clear?

15 A. I think they are.

16 Q. Is there any doubt in your mind that those
17 specifications are clear?

18 A. Not really. Picture tells a thousand words.
19 A picture is about the simplest explanation and we
20 use that picture over and over and over again with
21 members in talking about the need to trim trees and
22 the whys and wherefores by it that we are actually
23 bound by codes to do that.

24 Q. And the picture that speaks a thousand
25 words, which picture is that?

1 A. That is the one within the contract that is
2 provided as part of the RUS guidelines.

3 Q. And I am going to hand you what we have
4 marked as Exhibit 65.

5 (Exhibit 65 was marked for identification.)

6 BY MR. PAHLKE:

7 Q. Is that the picture that speaks a thousand
8 words?

9 A. Yes, it is.

10 Q. Is that in every contract with every tree
11 trimmer including Asplundh that you have engaged in
12 in the last several years -- all the years you have
13 been at Beartooth Electric?

14 A. As long as Beartooth has subscribed to the
15 RUS design and clearances for building and
16 maintaining power lines.

17 Q. Those RUS standards.

18 A. RUS standards.

19 Q. Those standards are there for a reason.

20 A. Yes, they are.

21 Q. They are there for a safety reason.

22 A. Safety and reliability.

23 Q. Both -- both reasons?

24 A. Yes, absolutely.

25 Q. And that's something -- that picture is not

1 clearing guide"?

2 MR. BONA: Not on the camera.

3 MR. BAILEY: It's not on the camera.

4 MR. PAHLKE: It is now.

5 BY MR. PAHLKE:

6 Q. Would you circle the date that you
7 understand Exhibit 65 became effective. Now at the
8 top of this exhibit which you attach to every
9 contract, true?

10 A. That is correct.

11 Q. For tree trimming.

12 A. Yes.

13 Q. Would you circle the 30-foot. What does the
14 30-foot represent?

15 A. Tree line to tree line.

16 Q. What does that mean?

17 A. The corridor that the power line runs
18 through has to be 30 feet, at least 30 feet wide.

19 Q. Does that mean 15 feet on each side of the
20 pole?

21 A. That would be a fair conclusion.

22 Q. Is it your conclusion?

23 A. The way that I am looking at the diagram,
24 yes.

25 Q. Then below that next pole there are some

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1 letters or some numbers, and it says, as I read it,
2 ten-foot minimum.

3 A. That is correct.

4 Q. Do you know what that means?

5 A. From the center line of the pole to the
6 nearest tree limb would be ten feet minimum.

7 Q. So that's an absolute minimum.

8 A. As depicted here on the picture, yes.

9 Q. That you have been using this exhibit for
10 years.

11 A. Yes.

12 Q. And this is what you're telling the tree
13 trimming companies they have to do to stay within
14 the standards, true?

15 A. That is correct.

16 Q. They have to give a 30-foot corridor where
17 the power line is going to go through, true?

18 A. That is correct.

19 Q. There has to be at least a minimum of ten
20 feet per side of space before you have any
21 possibility of interference with a tree?

22 MR. BONA: Misstates the document. Go
23 ahead.

24 THE WITNESS: As I read it from the center
25 line of the pole.

1 BY MR. PAHLKE:

2 Q. From the center line of the pole, there has
3 to be ten feet of space free of any tree.

4 A. Minimum.

5 Q. Minimum. And it could be more. It could be
6 up to 30 feet, 15 feet on a side.

7 MR. BONA: Calls for speculation.
8 Incomplete hypothetical.

9 BY MR. PAHLKE:

10 Q. True?

11 A. I believe so, yes.

12 Q. You're the guy that has been signing this
13 contract since when at Beartooth?

14 A. That's right.

15 Q. How long?

16 A. Five-and-a-half years since August of 2017.

17 Q. Has Asplundh ever come to you and said, Sir,
18 I don't know what this contract means?

19 A. No.

20 Q. Have they ever said, I don't know what a
21 30-foot core door means?

22 A. No.

23 Q. Has Asplundh ever come to you and said, I
24 don't understand what 10 feet from the center of the
25 pole to the nearest tree branch means?

1 or out straight horizontally. I have no knowledge
2 of the direction that limb was growing.

3 BY MR. PAHLKE:

4 Q. But we know that it was clearly invading the
5 space that was supposed to be free of?

6 MR. BONA: Calls for speculation.

7 THE WITNESS: That's correct.

8 BY MR. PAHLKE:

9 Q. So who was the foreman that Eric was talking
10 to?

11 A. I would just be guessing at that name. Eric
12 can answer that question for you.

13 Q. Do you know the name of the trimmer?

14 A. No.

15 Q. But what Eric shared with you is the tree
16 trimmer said to his foreman, that's the tree I
17 talked to you about a few times?

18 A. That is correct.

19 Q. And he was saying, that tree needs to be
20 trimmed, to the foreman?

21 A. I don't know what he said specifically to
22 the foreman.

23 Q. But we do know that he was calling to the
24 foreman's attention that that tree needed to be
25 trimmed?

1 Q. And now is the other and different version
2 that we sent that was shown on January 20, to the
3 people at the community event center?

4 A. They should be the same. The person that
5 did the actual PowerPoint for me is the one that is
6 sending them.

7 Q. Who did the PowerPoint?

8 A. Kaaren Robbins.

9 Q. I am going to jump ahead. I just want to
10 talk to you about the 30(b)(6) notice we had
11 provided. It is my understanding you are one of the
12 guys designated to speak on behalf of the company;
13 is that correct? Am I correct?

14 A. That is correct.

15 Q. And are you going to be speak on all topics
16 or have you guys divided it up?

17 MR. BAILEY: There has been no division. I
18 provided this to Mr. Owens and Mr. Elton and was
19 advised those are the two people that can respond so
20 I think you're going to have to go
21 question-by-question.

22 MR. PAHLKE: To shorten this up, if I have
23 already covered some things that I would cover more
24 in depth here, can we agree that he is speaking on
25 behalf of Beartooth?

1 MR. BAILEY: Absolutely.

2 MR. PAHLKE: That is agreeable to you too,
3 sir?

4 THE WITNESS: Yes.

5 BY MR. PAHLKE:

6 Q. You have been provided -- look at Exhibit 53
7 or if you prefer, I can give you a clean copy and
8 you don't have to wrestle with that big notebook?

9 MR. BAILEY: He has got it, Bob. He is
10 looking at it.

11 MR. PAHLKE: Okay. Ken, I have a copy for
12 you.

13 BY MR. PAHLKE:

14 Q. Mr. Owens, have you had the opportunity to
15 look through Exhibit 53 before today?

16 A. Yes.

17 Q. So let's just talk about it. Exhibit 53 is
18 the 30(b)(6) deposition notice?

19 A. Yes.

20 Q. You have been selected as a company
21 spokesman on some of these topics or perhaps parts
22 of all or all?

23 A. That is correct.

24 Q. Who selected you?

25 A. Who selected me?

1 Q. Yes.

2 A. I did. Comes with the job.

3 Q. How did you decide to select yourself?

4 A. It is my job.

5 Q. Do you understand that your testimony binds
6 the defendants on the topics that are listed on the
7 30(b)(6) notice Exhibit 53?

8 A. Correct.

9 Q. And before we started talking about
10 Exhibit 53, we had a brief conversation and to save
11 time, I think we have all agreed that if I talk to
12 you -- if I have already talked to you about one of
13 these topics, we can agree that that is on behalf of
14 the Beartooth Electric Cooperative?

15 A. Correct.

16 Q. So we don't have to plow things twice, fair
17 enough, and agreed to by all?

18 A. Yes.

19 MR. BAILEY: Yes.

20 BY MR. PAHLKE:

21 Q. Let's just talk. You said, maybe answer to
22 my question before I got to it, you were selected
23 because having the position you have with the
24 Beartooth, this sort of thing comes with the job?

25 A. That's correct.

1 Q. You do understand your testimony binds the
2 Beartooth on the topics that we're going to address
3 and have addressed?

4 A. That's correct.

5 Q. Do you agree to testify on all of the
6 topics? I think we have 13.

7 A. I believe so, yes.

8 Q. What have you done to prepare for this
9 deposition?

10 A. Just briefed myself on the interrogatories
11 and the responses that we provided on these notices.

12 Q. About how much time did you spend preparing
13 for this deposition?

14 A. Probably 3 or 4 hours yesterday.

15 Q. Who has information besides you on these
16 topics?

17 A. Eric Elton and myself collaborated on all of
18 these.

19 Q. You talked to Eric?

20 A. He did a lot of the data gathering that was
21 in his possession.

22 Q. And what have you learned from Eric?

23 A. What did I learn from Eric?

24 Q. As it relates to these questions.

25 A. There weren't any surprises. It was stuff

1 MR. BONA: Argumentative.

2 THE WITNESS: The work should have been done
3 correctly and was not done.

4 Q. And just because we had an objection, things
5 get a little confused at the end of the day. What
6 should have been done is the tree should have been
7 trimmed back at the Hutton property where the fire
8 started?

9 MR. BONA: Calls for speculation, lacks
10 foundation.

11 THE WITNESS: I believe it should have been,
12 yes.

13 BY MR. PAHLKE:

14 Q. It was not?

15 A. That is correct.

16 Q. You confirmed that on the basis of personal
17 observation?

18 A. Yes.

19 MR. BONA: Same objections.

20 BY MR. PAHLKE:

21 Q. So Eric goes and he inspects to make sure
22 the Asplundh does what its supposed to do?

23 A. Yes.

24 Q. He reported back to you that Asplundh hadn't
25 done what he was supposed to do at the Hutton camp

1 property?

2 A. Yes. That was probably a joint -- one of
3 those joint trips out there in the field to the
4 site.

5 Q. Was that something he reported to you?

6 A. Yes.

7 Q. Did he report that to you before the fire?

8 A. No.

9 Q. So he had not inspected that area or didn't
10 report to you about that area not being trimmed back
11 like it was supposed to before the fire?

12 A. That's correct.

13 Q. Are there any audits of these areas to make
14 sure they're being properly done, properly trimmed?

15 A. Other than what I just previously described
16 to you as far as him driving through the areas and
17 circuits when he is there in the area following-up
18 work they have done on a circuit.

19 Q. And is that also what you might call a
20 patrol the power line?

21 A. Well, it's -- no, it is a different function
22 than patrolling. Patrolling is looking for the
23 cause of an outage, what might be a problem for the
24 future per se or the cause of an outage. Like I
25 say, inspecting work is a totally different function

1 property where the fire started?

2 A. No, I don't.

3 Q. In terms of the help you have been trying to
4 get in terms of management, you have taken it upon
5 yourself in part to have this program 20 percent a
6 year for every five years, and you have companies
7 like Asplundh and Davey coming in and trimming?

8 A. I know that to be the correct way to operate
9 a vegetation management program.

10 Q. And who -- you shared already that the guy
11 that is going to testify later today?

12 A. Eric.

13 Q. And he does inspections to see that the
14 Asplundhs are doing their job?

15 A. Correct.

16 Q. Are there any other assessments, surveys, or
17 patrols to look to see: Is there a hazard between
18 power lines and trees or to confirm that the tree
19 trimmers are doing their job?

20 A. It would come directly back from the line
21 crews to the journeymen in their work out in the
22 field.

23 Q. The bidding, is that submitted -- are the
24 bids submitted to the lowest bidder or how do you
25 assign them the contract work that you have?

1 days?

2 A. I presume it was many, much more than three
3 days, yes.

4 Q. Any other knowledge you have or oral written
5 communications about the activities of your company
6 or Asplundh concerning the Line Creek area and
7 specifically what we are calling the subject tree
8 which is the one where the fire started?

9 A. I don't believe we have had anymore contact
10 with Asplundh, other than meeting on site and doing
11 existing work.

12 Q. Topic 6, evidence associated with origin and
13 cause of the Clark fire. You shared some
14 information. Do you have any other information to
15 share that you haven't already shared?

16 A. Regarding the origin?

17 Q. Yes.

18 A. No. Just that I have got a different
19 perspective as going through the process in the
20 investigation process.

21 Q. Have you shared that with us?

22 A. No, I haven't.

23 Q. Do you want to share it with us?

24 A. I believe that it is reasonable to suspect
25 that that contacting of that limb with that

1 conductor was the origin of the fire.

2 Q. Why do you believe that?

3 A. It is just understanding a lot of the
4 investigation and watching people, listening to them
5 out in the field and taking a look at the line, the
6 marks on the line and understanding a little bit
7 more about the fire investigation process. I think
8 that is a reasonable conclusion.

9 Q. Who did you talk to that helped you get to
10 that conclusion by name?

11 A. They weren't helping me get to a conclusion.
12 I was making my own conclusions just based on
13 reading Eric's report. I just read the IRIS report
14 and other things like that. I think that is -- I
15 think it is a person in my position, how in the hell
16 it happened? I don't know, but I think it happened.

17 It is a real stretch for me, as I said, from
18 day one. I couldn't get it through my head how
19 sparks could travel from what I believe was a
20 smouldering line contact with a tree that could
21 generate enough energy, enough sparks to travel
22 150 feet through this spiderweb of limbs.

23 I just couldn't get there, but I have
24 nothing else. I had nothing. I just reported that
25 somebody felt it was an ash can. That is all I did

1 there. I didn't know if it was valid or not. It
2 was just a point of reference that I probably beat
3 you down a hell of a lot more if I didn't bring
4 something like that forward and somebody calling up
5 saying, hey, that is where that fire started, but I
6 think it is a reasonable conclusion.

7 Q. That the fire started at the tree?

8 A. Yes.

9 Q. On the Hutton property where the camp was
10 located?

11 A. I think that is a reasonable conclusion at
12 this point.

13 Q. That is your conclusion on behalf of the
14 Beartooth?

15 A. Yes.

16 Q. Any other evidence concerning origin and
17 cause of the fire that has been called by me the
18 Clark fire? It has been called other things: That
19 tree that was involved in Mrs. Ruth's death, the
20 Hutton campfire which isn't the right name but the
21 owner's name?

22 A. I just think it is just one of those things
23 that you constantly wrestle with. I have never
24 dealt with anything this tragic in my 46 years in
25 the business. I hate to see it; I hate to be part

1 BY MR. PAHLKE:

2 Q. But the pole didn't break off?

3 A. No, but --

4 Q. So let's assume --

5 A. -- I am not going to speculate.

6 Q. We have already established through you that
7 the limb was the source of the fire?

8 A. I think that is a reasonable conclusion.

9 Q. Had the limb -- that limb been removed and
10 others around it if they needed to be removed, that
11 area would not have been a source of the fire; do
12 you agree?

13 MR. BONA: Calls for speculation, incomplete
14 hypothetical.

15 MR. BAILEY: Same objection, go ahead.

16 THE WITNESS: I -- just on the facts that we
17 know right now.

18 BY MR. PAHLKE:

19 Q. Yes?

20 A. It would not have contacted.

21 Q. And I have never been in the position of
22 Cindy Ruth. I have never been in winds that you
23 describe as high as 140 miles-an-hour, maybe more,
24 maybe it is less than that. Maybe it is a hundred
25 miles-an-hour, in blow sand with a fire that is

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1 terrible, terrible tragedy, that it is hard to place
2 blame on anyone under the condition of such extreme
3 wind and fire, event like that. They just felt it
4 was a terrible, terrible tragedy to Larry and the
5 community.

6 Q. To Larry?

7 A. Suffering the loss of Cindy.

8 Q. You mean Jerry?

9 A. Jerry, yes. I am sorry.

10 Q. Are you blaming -- I need to know, are you
11 blaming Cindy?

12 A. No, I am not speculating on any of that. It
13 is just, as I relayed originally, it is a terrible
14 event that a lot of things happened in a very short
15 amount of time.

16 Q. Are you critical of Cindy?

17 A. No.

18 Q. Are you critical of Jerry?

19 A. No.

20 Q. Are you critical of the fire department?

21 A. No, I have nothing to be critical of them
22 of. It was a terrible event. It was a tragic
23 event. You wouldn't want to see anybody go through
24 or that community go through.

25 Q. You do agree that if a tree trimming company

1 had done its job properly, it could have cut that
2 limb back?

3 MR. BONA: Asked, answered, calls for
4 speculation, incomplete hypothetical, calls for
5 expert opinion.

6 MR. BAILEY: Right. Could I get that
7 question read back?

8 (The last question was read by the court
9 reporter.)

10 THE WITNESS: Yes, I believe that.

11 BY MR. PAHLKE:

12 Q. The next topic I have for you is, I believe,
13 No. 7, scope of the contract you have had with
14 Asplundh?

15 A. Yes.

16 Q. Is there any additional information that you
17 haven't given us concerning the contract and the
18 performance of the contract you want to call to our
19 attention?

20 A. No.

21 Q. Other than Exhibit 65, the large poster, are
22 there any quality control standards, safety
23 standards, safety rules, safety practices that apply
24 to either, first of all, to bear...

25 MR. BAILEY: Beartooth.

1 A. Not very many.

2 Q. But you don't know?

3 A. No, I don't.

4 Q. But you know it does happen a few to a
5 number of times per year?

6 A. We have got a couple areas of our system
7 that experience high winds.

8 Q. This is one of them?

9 A. Yes.

10 Q. It has done so for years?

11 A. I would say more pronounced in recent years
12 than in the past. There is an element of climate
13 change that has taken place in that valley and the
14 Beartooths.

15 Q. So No. 2, I asked you this before. I think
16 you already answered it, but do you in any way
17 criticize or blame Cindy Ruth for her death?

18 A. No, not at all.

19 Q. Do you in any way blame the Clark Fire
20 Department?

21 A. No. I am not passing judgment on any of
22 those people.

23 Q. Do you -- in this it says, if the Clark fire
24 was caused by a tree coming into contact with your
25 line and if a pre tree was not properly trimmed by

1 protection system.

2 A. That was part of the wrestling in my head.

3 Q. Did Mr. Black have a struggle with that same
4 idea, to your knowledge?

5 A. No, he didn't share anything that was going
6 on in his head.

7 Q. Mr. Black doesn't -- his report states that
8 he does not agree that the tree to power line
9 contact caused the fire, doesn't it?

10 A. I think he does on that preliminary one,
11 yeah.

12 Q. Is there another report?

13 A. No, I have never seen another report.

14 Q. I think you said that he -- the five and a
15 half -- it was 5-and-a-half feet distance from the
16 power line to the contact on the tree?

17 A. Yes.

18 Q. Do you mean the little nub that was depicted
19 in the photographs?

20 A. Yes, the charred area.

21 Q. Did you measure that yourself?

22 A. No. He did. Eric did in a bucket.

23 Q. He said it is five-and-a-half feet from the
24 conductor to the area of broken tree?

25 A. That's right. He was up in the bucket with

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1 actually applied for service to get electricity
2 there, and on their membership application, I
3 believe that was 2004.

4 Q. And do you know -- well, has that line
5 been -- had any maintenance done to it?

6 A. Eric would know the answer to that question.

7 Q. Okay.

8 A. Right away.

9 Q. And do you do -- well, does the RUS require
10 pole integrity inspection, pole inspections?

11 A. I don't believe so. There are practices in
12 place. Every ten years, you're supposed to inspect
13 your system, or ten percent of your system every
14 year, something along that line. We have those
15 requirements in Wyoming specifically.

16 Q. Does Beartooth follow those requirements?

17 A. They have since I have been there.

18 Q. Do you know when the last time the poles in
19 Line Creek line would have been inspected?

20 A. 2019 or January 7, 2020.

21 Q. Who did that work -- who did the inspection?

22 A. Our linemen.

23 Q. Did they also visually inspect the lines?

24 A. I don't know if that was part of it or not.

25 It was a GIS location. It was pictures of the tree,